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THIRD COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE THIRTEENTH MEETING

Held at the Parque Central, Caracas,
on Friday, 9 August 1974, at 10.55 a.m.

Chairman:	Mr. YANKOV	Bulgaria
Rapporteur:	Mr. HASSAN	Sudan

CONTENTS

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AS THIS RECORD WAS DISTRIBUTED ON 13 AUGUST 1974, THE TIME-LIMIT FOR CORRECTIONS WILL BE 20 AUGUST 1974.

The co-operation of participants in strictly observing this time-limit would be greatly appreciated.

PROGRESS REPORTS OF CHAIRMEN OF INFORMAL MEETINGS ON ITEMS 12 (PRESERVATION OF THE MARINE ENVIRONMENT) AND 13 AND 14 (SCIENTIFIC RESEARCH AND DEVELOPMENT AND TRANSFER OF TECHNOLOGY)

Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on item 12 (Preservation of the marine environment) said that at those meetings a method of work had been adopted that would enable delegations to continue working in an orderly manner. It had been decided to cover the following subjects:

1. Pollution from land-based sources;

2. Marine pollution from activities concerning exploration and exploitation of the sea-bed within the areas of national jurisdiction;

3. Marine pollution from activities concerning exploration and exploitation of the sea-bed beyond the areas of national jurisdiction;

4. Pollution from vessels (flag State, coastal State, port State);

5. Marine pollution from the atmosphere;

6. Pollution from dumping of wastes in the sea (flag State, coastal State, port State);

7. Other sources of marine pollution.

It only remained to undertake the difficult task of drafting provisions on those and other topics in the small drafting and negotiating group.

Mr. METTERNICH (Federal Republic of Germany), speaking in his capacity as Chairman of the unofficial meetings on items 13 and 14, said that the consultation and negotiation group set up at the informal meetings had worked out texts for two articles, and three paragraphs of a third article. Negotiations would continue on a further paragraph of that article.

As soon as a consolidated position was reached among delegations concerning rules of conduct for marine scientific research and consent, participation and obligations of coastal States, the consultation and negotiation group would start working out texts on those items, which would then be submitted to the Committee meeting informally.

It was hoped that the consultation and negotiation group would that day end its task of drafting an agreed text on general conditions for the conduct and promotion of marine scientific research. There would then be an informal meeting for a first reading of item 3 of the informal comparative table (CRP/Sc.Res./1).

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(Mr. Metternich, Federal Republic of Germany)

If there was time, the informal meeting could then begin its first reading of items 4 and 5 and then go on to discuss a number of drafts introduced in Sub-Committee III of the Sea-Bed Committee in 1973.

PRESENTATION OF PROPOSALS ON ITEM 13 (MARINE SCIENTIFIC RESEARCH)

Mr. APPLETON (Trinidad and Tobago) introduced document A/CONF.62/C.3/L.9, containing draft articles on marine scientific research. Reviewing the articles, he said that since in article I it was very difficult to make a clear distinction between pure scientific research and industrial or other research, a considerable degree of control would be needed.

With respect to subparagraph (c) of article IV, he recalled the extreme position adopted by certain delegations at the Sea-Bed Committee which had held that the results of scientific research should be the property of the coastal State. His delegation was now proposing that the originals should remain the property of the coastal State only where specimens could not be duplicated. Under subparagraph (d) his delegation now wished to add the words "and not being unnecessarily withheld" at the end.

Mr. YTURRIAGA BARBERAN (Spain) pointed out a discrepancy between the wording of articles II and IV. The former read "Marine Scientific Research in the territorial sea shall only be conducted with the prior approval of the coastal State ..." Article IV, however, read: "Marine Scientific Research in the exclusive economic zone/ patrimonial sea and on the continental shelf shall be conducted only with the prior authorization of the coastal State ..."

Mr. JAIN (India) endorsed that view. It would be better to use the word "authorization" in both places.

With respect to article V, he pointed out that it was not clear whether the international authority would have authority over the water column. He therefore wondered whether it would be possible to add, after the words "be conducted" in the first line, the words "in conformity with its competence".

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Mr. RAMADAN (Egypt) said that draft article I seemed to lack the proper scientific approach. The definition in CRP/Sc.Res./12, submitted by his delegation, might be more suitable.

Mr. BUSTANI (Brazil) asked whether there was a difference between "prior approval" and "prior authorization" in the view of the Trinidad and Tobago delegation. If there were no difference, he wondered why there were separate sections in the draft articles for the territorial sea and the economic zone.

Mr. HUSSAIN (Pakistan) said that his delegation was in agreement with the draft articles in A/CONF.62/C.3/L.9. It fully agreed that no lines could be drawn between pure and other research and that all such research should be conducted for peaceful purposes.

He agreed with the Egyptian representative that article I did not constitute an adequate definition of marine scientific research.

Article II was in line with a document sponsored by his delegation at the Sea-Bed Committee (A/AC.158/SC.III/L.55), though it differed in that it used the words "prior approval" whereas his delegation's text had read "explicit consent". The present draft articles also distinguished between the territorial sea and the economic zone.

His delegation endorsed the ideas in articles III, IV and V. With respect to article V, his delegation had submitted a similar proposal (CRP/Sc.Res./3/Rev.1).

Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that his delegation had some problems with regard to the document as a whole.

With respect to article V, it would be unrealistic to ignore the fact that no State would be ready to give the international authority exclusive rights to marine scientific research, for the authority would then carry out only such research as was of interest to it. Moreover he foresaw certain problems of financing.

Mr. MBOTE (Kenya) said that his delegation was generally in agreement with the draft articles but it, too, would like a clarification of the distinction between "prior approval" and "prior authorization".

Since the list of the rights of coastal States given in article IV could not be exhaustive, it might be better to insert the term "inter alia" in the introductory paragraph; alternatively, the list might be omitted.

(Mr. Mbote, Kenya)

He understood that the question of the "International Area", referred to in article V, was still being debated in the First Committee. The Third Committee should not of course prejudge the outcome of that debate, but for the present he could support the wording of the article.

Miss MARIANI (France), referring to article I, subparagraph (b), said that it was possible to make a distinction between pure scientific research and industrial or other research. The point of industrial research was that it should have an immediate practical application, whereas pure research need not have such an application and was moreover public property. It should be remembered that industrial research could also bring benefits to mankind.

Her delegation could not at present accept article V which prejudged the decisions to be taken elsewhere concerning the international zone. Her delegation thought that the sponsors had not reflected sufficiently on the financial implications of the article.

Mr. BOHTE (Yugoslavia) said that his delegation would also like to have clarification of the difference between "prior approval" and "prior authorization". It might be possible to link articles II and IV, using clearer terminology.

He agreed with the comments made by the representative of Kenya about the rights listed in article IV; the list might well be omitted.

He thought that the wording of article V should be the same as that used in the proposals which the Group of 77 had submitted to the First Committee, where the question of the international zone was still under consideration.

Mr. MOLTENI (Argentina) said that his delegation supported article I because there was no practical difference between pure and applied research. It, too, would like a clarification of the terms "prior approval" and "prior authorization". He agreed that the list of rights in article IV was not exhaustive; moreover, the possibility that coastal States might impose other requirements should be left open. Article V must for the moment remain provisionsl, being dependent on the jurisdiction vested in the International Authority. On that understanding, his delegation could accept it.

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Mr. BOTHA (South Africa) suggested that the words "or refusal" should be omitted from article IV, subparagraph (d), and that the second part of the subparagraph should read: "such consent being given within a reasonable time, and not being unreasonably withheld".

Mr. YTURRIAGA BARBERAN (Spain) said that the definition given in article I was acceptable but that it might be better to preface it with the words "for the purposes of this Convention". His delegation agreed with the point made in subparagraph (c) but thought that it might be omitted.

With regard to the distinction between "prior approval" and "prior authorization", his delegation thought that the requirement for the territorial sea should be different from that for the economic zone.

He noted that there was no intention to give an exhaustive list in article IV, since the article referred to "minimum requirements". He agreed that article V gave rise to problems and that the Committee should not prejudge the decisions of the First Committee. However, he could not agree that the question of the international zone concerned only the First Committee. There were two main aspects: the régime governing scientific research beyond the limits of national jurisdiction, and the conduct of such research. While the régime fell within the competence of the First Committee, the question of conduct of scientific research fell within the competence of the Third. There might be a need for a joint meeting of the two Committees.

Mr. DAHAK (Morocco) said that the definition given in article I was not complete. He noted that the term "marine environment" had itself not yet been defined. The definition of marine scientific research could be accepted provided that the marine environment was not understood to include the air space above the sea.

Article I, subparagraph (c) might be improved by replacing the words "by means not harmful" with the words "by means not prejudicial", since harmful effects might not be apparent at the time the research was being conducted.

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Mr. BUSTANI (Brazil) asked the representative of Spain whether the distinction he had made between "prior approval" and "prior authorization" meant that he wanted to have different jurisdictions for the territorial sea and the continental shelf.

Mr. McCOMIE (Barbados), speaking on a point of order, said that he had understood that, when a proposal had been introduced by its sponsor, delegations might then seek clarification but should not enter into substantive issues. The present debate clearly dealt with substance and amendments had even been submitted.

The CHAIRMAN agreed with the point made by the representative of Barbados: substantive matters should first be discussed in informal meetings. He appealed to delegations to conform to that arrangement.

Mr. HUSSAIN (Pakistan) said that he wished to make his delegation's position on article III clear: the aim was to include the concept of national jurisdiction; therefore, the words "or areas of national jurisdiction" should be inserted after the words "territorial sea".

Mr. BERTELS (Netherlands), referring to article IV, said that the granting of prior authorization made sense only if it was subject to specified maximum, rather than minimum, requirements.

Mr. APPLETON (Trinidad and Tobago) referring to the distinction between "prior approval" and "prior authorization", said that the intention was to provide a stronger régime for the territorial sea than for the economic zone. However, his delegation thought that the terms could be used interchangeably.

Subparagraph (b) of article I was not meant to be part of the definition of marine scientific research, which was given in subparagraph (a).

The territorial sea and the economic zone or patrimonial sea had been dealt with separately in articles II and III and in article IV respectively, for the purposes of negotiation.

He agreed that the list of rights given in article IV was not exhaustive but, as the representative of Spain had pointed out, the introductory paragraph did include the term "minimum requirements".

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(Mr. Appleton, Trinidad and Tobago)

The representative of Byelorussia had said, with reference to article V, that the International Authority should not have the exclusive right to control scientific research. In his delegation's view, the essential point was that the Authority should have the right to decide who should undertake the research, even if initially it lacked the means to do so itself. He agreed, however, that the Committee should not prejudge the issue. He accepted the suggestion made by the representative of India that some formula such as "in conformity with this Convention" should be inserted after the words "shall be conducted" in the first line of the same paragraph.

If the South African proposal that the words "or refusal" should be omitted from article IV, subparagraph (d), were accepted, there would be no need to require the consent of the coastal State, since it would not have the right to refuse.

He noted that article I, subparagraph (a), included the words "and experiments related thereto", which he thought covered the point made by the representative of Morocco concerning air space.

Mr. COLLINS (Liberia), introducing document A/CONF.62/C.3/L.10, said that the purpose of the amendment proposed in paragraph 2 of that document was to ensure that port States adopted the national legislation required for the enforcement action referred to in article 8 of document A/CONF.62/C.3/L.4.

His delegation could not accept document A/CONF.62/C.3/L.4 as it stood, but could accept it with the amendments proposed in the document he was introducing.

Mr. PERRAKIS (Greece) said that he found the amendments proposed in document A/CONF.62/C.3/L.10 quite acceptable. In fact, they clarified and improved upon document A/CONF.62/C.3/L.4.

Mr. BREUER (Federal Republic of Germany) said that he wished to clarify certain aspects of document A/CONF.62/C.3/L.7 which he had not had time to explain in his statement at the 12th meeting of the Committee.

That document tried to serve two fundamental interests: the protection of the marine environment of coasts and the free flow of shipping. The latter interest was of the highest importance for developing countries which were entering the area of sea trade with new ships flying their own flags. Those States were concerned that

(Mr. Preuer, Federal Republic of Germany)

coastal States should not apply standards stricter than those laid down by international law concerning the construction, design, equipment, maintenance and operation of vessels. Document A/CONF.62/C.3/L.7 had been prepared with that interest in mind.

According to scientists, the most hazardous long-term effects on the marine environment resulted not from major pollution incidents but from chronic pollution caused by continuously escaping small quantities of oil and other harmful substances. To remedy that problem, article I, paragraph 1, of his delegation's proposal imposed on flag States the obligation to deny to ships which did not comply with IMCO or stricter flag-State anti-pollution requirements the right to fly their flag, and to issue certificates for ships complying with those requirements.

To facilitate inspection measures, article I, paragraph 2, provided that those certificates would have the same validity with respect to the authorities of other States as if those States had issued them. That should be acceptable if at the same time, as provided in article I, paragraph 3, the flag State was held responsible for marine pollution incidents caused by ships to which it had issued certificates that incorrectly attested to compliance with anti-pollution requirements. However, he wished to emphasize that that last provision was not intended to detract from the primary liability of ship-owners in respect of pollution damage.

Still more important were the provisions designed to ensure that flag States complied with their obligations. His delegation's proposal provided, first, for the participation of port and coastal States in the enforcement measures implemented by flag States with a view to supporting and controlling flag States in that regard. For that purpose, article II, paragraph 1, made provisions for the inspection of certificates of ships in certain areas by port and coastal State authorities, and even for inspection of the ships themselves under some circumstances.

A second category of measures was designed to put pressure on flag States to carry out their obligations. To that end, article III, paragraph 1, entitled port States to deny entry to their ports of off-shore terminals to ships not carrying valid certificates, and entitled coastal States to deny such ships passage through their territorial sea. However, his delegation did not think it necessary to give coastal States the right to inspect ships in innocent passage through their territorial sea, as their rights in that area were adequately protected by the presumption contained

(Mr. Breuer, Federal Republic of Germany)

in the second sentence of article III, paragraph 1, which allowed them to order ships to leave the territorial sea. That was a considerable step towards ensuring that ships complied with environmental requirements, for it meant that ships not carrying the required certificates could not fully engage in commercial activities since they could not be sure of unloading their cargoes.

The question of free passage through international straits which formed part of a territorial sea was still unresolved at the Conference. His delegation's present view was that the right to deny foreign ships passage through the territorial sea would not apply to such areas.

The articles concerning violations of discharge regulations were also based on co-operation and mutual control by flag, port and coastal States. They set up a system of inspection measures ensuring effective and adequate investigation of all types of violations. Article II, paragraph 2, envisaged that the inspection of ships should normally be carried out in ports, off-shore terminals or internal waters. If that inspection indicated that discharge regulations had been violated on the high seas, a report, pursuant to paragraph 3 of the same article, would be forwarded to the flag State and to the competent international organization which, in his delegation's opinion, should be the Inter-Governmental Maritime Consultative Organization. However, if a ship had violated discharge regulations in the territorial waters or internal waters of the inspecting State, paragraph 3 provided that that State could institute proceedings against the ship under its national law. Article III, paragraph 2, complemented those inspection rights of port States by establishing similar rights for coastal States, under the circumstances specified in that paragraph, with respect to ships passing through their territorial sea.

In cases of substantial pollution on the high seas in the vicinity of the territorial seas of coastal States, coastal State inspection powers should be supplemented, as provided in article IV, paragraph 1, by conferring on those States the right to inspect a ship found near the site of the pollution incident, if there were reasonable grounds for believing that it had violated discharge regulations. That provision was the core of his proposal. Although the provision was limited to pollution incidents, his delegation believed that it gave coastal States more protection against vessel-source pollution adjacent to their territorial seas than would pollution control

(Mr. Breuer, Federal Republic of Germany)

zones, since under his delegation's approach, ships would be subject to inspection not only within such zones but everywhere on the high seas in the vicinity of the territorial seas of coastal States. That would have the advantage of greater flexibility and effectiveness. Regional or bilateral arrangements for the establishment and implementation of co-operative inspection procedures could further increase the effectiveness of that new right of coastal States.

Inspection of ships for violations of discharge regulations would, in the high seas, normally be carried out through co-operation between flag and port States. However, if such violations resulted in substantial pollution of the marine environment of the high seas in the vicinity of the territorial sea of coastal States, i.e. if coastal States were confronted with a real danger to their coastlines and marine resources, his delegation's approach also provided for on-the-spot detection by coastal States. That had the advantage of ensuring not only effective investigation and punishment of violations of discharge regulations but also recognition of the right of coastal States and their nationals to compensation for damage resulting from pollution incidents.

His delegation realized that those provisions and the other enforcement rights contained in its proposal could entail a certain risk of unjustified interference with international navigation. Article V of the proposal therefore provided some safeguards designed to minimize those risks as far as possible. Most of those safeguards had already been incorporated in international conventions and required no explanation. He wished merely to point out that his delegation attached great importance to the elaboration and implementation of regulations which, as stated in article V, paragraph 1, would render unnecessary the stoppage or boarding of ships en route.

The meeting rose at 1 p.m.